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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,874	12/31/2001	Guy Roberts	US010686	6434

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EXAMINER

LUU, SY D

ART UNIT PAPER NUMBER

2174

DATE MAILED: 10/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/038,874

Applicant(s)

ROBERTS ET AL.

Examiner

Sy D. Luu

Art Unit

2174

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 August 2006.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-20 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 07 May 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This communication is responsive to Amendment A, filed 7/12/1999.
2. Claims 1-20 are pending in this application. Claims 1, 6, 11, and 16 are independent claims. In the instant Amendment, claims 1, 4-6, 9-11, 14-16, and 19-20 were amended. This action is made Final.
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 16-20 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter, specifically a signal. Computer signals are not physical "things," nor are they statutory processes, as they are not "acts" being performed. Such claimed elements do not define any structural and functional interrelationships between the signal and other claimed aspects of the invention which permit the signal's functionality to be realized. In contrast, a claimed computer - readable medium encoded with computer signals defines structural and functional interrelationships between the computer program and the medium which permit the signal's functionality to be realized, and is thus statutory. See MPEP §2106 Section IV.B.1(a).

6. According to the latest “Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility” dated October 26, 2006, Section ANNEX (IV)(c) regarding “Computer-Related Nonstatutory Subject Matter” on Electro-Magnetic Signals, on page 57, it is clearly noted that “A signal, a form of energy, does not fall within either of the two definitions of manufacture. Thus, a signal does not fall within one of the four statutory classes of § 101.” (Emphasis Added). Thus, the rejection under 35 U.S.C. § 101 regarding non-statutory subject matter is maintained accordingly. Note, the “Interim Guidelines...” can be downloaded from the official USPTO website.

Claim Rejections - 35 USC § 102

7. Claims 1, 3-6, 8-11, 13-16, and 18-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Maissel et al. (“Maissel”, US 6,637,029 B1).

As per claims 6 and 9-10, Maissel teach a content reception system comprising:

a input receiving content and information items regarding the content, wherein the information items form a search pool; and a display controller receiving search results from a search on the search pool and generating a plurality of graphical elements representative of each available item within a search pool, a graphical feature of each graphical element depending upon a relevance of the associated item to specified criteria, wherein the graphical element is dynamically updated in response to any change to the specified criteria or the search pool, wherein the graphical element is dynamically updated whenever the specified criteria are changed by either adding; deleting or modifying a search query element or updating a user profile, and wherein the graphical element is dynamically updated whenever an item is added or

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deleted from the search pool (Abstract; fig. 9D; col. 3, lines 1-8 and 36 et seq.; col. 6, lines 20 et seq.; col. 12, lines 46 et seq.).

As per claim 8, Maissel teach one or more graphical elements are representative of multiple items within the search pool and serving as a user control triggering expanded display of additional graphical elements each representative of a subset of the multiple items (col. 20, lines 60 – col. 21, line 8).

Claims 1 and 3-5 are individually similar in scope to claims 6 and 8-10 respectively, and are therefore rejected under similar rationale.

Claims 11 and 13-15 are individually similar in scope to claims 6 and 8-10 respectively, and are therefore rejected under similar rationale.

Claims 16 and 18-20 are individually similar in scope to claims 6 and 8-10 respectively, and are therefore rejected under similar rationale.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 2, 7, 12, 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maissel et al. (“Maissel”, US 6,637,029 B1) in view of Czerwinski et al. (“Czerwinski”, US 6,243,093).

Maissel teaches all of the limitations as applied to claim 6 above. However, Maissel does not teach the graphical feature of each graphical element depending upon the relevance of the associated item to specified criteria further comprises one of a size of the graphical element or a perceived proximity of the graphical element to a viewer. Czerwinski teaches a method for providing a graphical feature of graphical elements in a user interface, wherein depending upon the relevance of associated items to specified criteria, graphical elements are affected by one of a size, and a perceived proximity of the graphical element to a viewer (Abstract; fig. 14). It would have been obvious to an artisan at the time of the invention to combine Czerwinski's teaching with the system of Maissel in order to provide a visual feedback to a user of the degree of relevancy according to the user's preferences.

Claims 2, 12, 17 are individually similar in scope to claim 7, and are therefore rejected under similar rationale.

Response to Arguments

10. Applicant's arguments with respect to the independent claims have been fully considered but they are not persuasive.

Applicant argues that the Maissel reference contains no disclosure about a dynamically changing electronic program guide in response to any change.

The Examiner disagrees for the following reasons. By definition, "dynamic" or "dynamically" is interpretable to characterize an activity that is non-static, changing and in progress. Thus, it can be realized that, e.g., when Maissel's graphical element is updated, it is

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updated dynamically because an update could imply or mark a change, and any change is interpretable to be dynamic. Therefore, the claim language is still read on by Maissel's teaching.

It is noted that, while Applicants argues that the graphical element is continuously updating without reaccessing the system whenever a change is entered by a user (emphasis added). These specific points as emphasized were not in the claim language. If these points were meant to highlight the claimed invention as described in the specification, Applicants are invited to incorporate these specifics into the claim language for further consideration.

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Inquires

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sy Luu whose telephone number is (571) 272-4064. The examiner can normally be reached on Monday - Friday from 7:300 am to 4:00 pm (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kristine Kincaid, can be reached on (571) 272-4063.

The fax number for the organization where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



SY D. LUU
PRIMARY EXAMINER
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